

International table			United States table		FCC use designators	
Region 1 -- allocation MHz	Region 2 -- allocation MHz	Region 3 -- allocation MHz	Government	Non-Government	Rule part(s)	Special-use frequencies
(1)	(2)	(3)	Allocation MHz (4)	Allocation MHz (5)	(6)	(7)
944 – 960 FIXED MOBILE except aeronautical mobile BROADCASTING 703 704	944 – 960 FIXED MOBILE	944 – 960 FIXED MOBILE BROADCASTING 701	944 – 960	944 – 960 FIXED NG120	AUXILIARY BROAD- CASTING (74) FIXED MICROWAVE (101) INTERNATIONAL PUBLIC FIXED (23) PUBLIC MOBILE (22)	
*	*	*	*	*	*	*
1710 – 1850 FIXED MOBILE 740A 722 744 746	1710 – 1850 FIXED MOBILE 740A 722 744 745	1710 – 1850 FIXED MOBILE 740A 722 744 745	1710 – 1850 FIXED MOBILE 722 US256 G42	1710 – 1850 722 US256		
1850 – 1930 FIXED MOBILE 740A 746A	1850 – 1930 FIXED MOBILE 740A 746A	1850 – 1930 FIXED MOBILE 740A 746A	1850 – 1930	1850 – 1930 FIXED MOBILE	FIXED MICROWAVE (101) PERSONAL COM- MUNICATIONS (24) RADIO FREQUENCY DEVICES (15)	
1930 – 1970 FIXED MOBILE 746A	1930 – 1970 FIXED MOBILE Mobile-Satellite (Earth-to-space) 746A	1930 – 1970 FIXED MOBILE 746A	1930 – 1970	1930 – 1970 FIXED MOBILE	FIXED MICROWAVE (101) PERSONAL COM- MUNICATIONS (24)	
1970 – 1980 FIXED MOBILE 746A	1970 – 1980 FIXED MOBILE MOBILE-SATELLITE (Earth-to-space) 746A 746B 746C	1970 – 1980 FIXED MOBILE 746A	1970 – 1980	1970 – 1980 FIXED MOBILE	FIXED MICROWAVE (101) PERSONAL COM- MUNICATIONS (24)	

International table			United States table		FCC use designators	
Region 1 -- allocation MHz	Region 2 -- allocation MHz	Region 3 -- allocation MHz	Government	Non-Government	Rule part(s)	Special-use frequencies
(1)	(2)	(3)	Allocation MHz (4)	Allocation MHz (5)	(6)	(7)
1980 -- 1990 FIXED MOBILE MOBILE-SATELLITE (Earth-to-space) 746A 746B	1980 -- 1990 FIXED MOBILE MOBILE-SATELLITE (Earth-to-space) 746A 746B 746C	1980 -- 1990 FIXED MOBILE MOBILE-SATELLITE (Earth-to-space) 746A 746B	1980 -- 1990	1980 -- 1990 FIXED MOBILE	FIXED MICROWAVE (101) PERSONAL COMMUNICATIONS (24)	
1990 -- 2010 FIXED MOBILE MOBILE-SATELLITE (Earth-to-space) 746A 746B	1990 -- 2010 FIXED MOBILE MOBILE-SATELLITE (Earth-to-space) 746A 746B 746C	1990 -- 2010 FIXED MOBILE MOBILE-SATELLITE (Earth-to-space) 746A 746B	1990 -- 2010 US90 US111 US219 US222	1990 -- 2010 FIXED MOBILE US90 US111 US219 US222 NG23 NG118	AUXILIARY BROADCASTING (74) CABLE TELEVISION (78)	
2010 -- 2025 FIXED MOBILE 746A	2010 -- 2025 FIXED MOBILE 746A	2010 -- 2025 FIXED MOBILE 746A	2010 -- 2025 US111 US222	2010 -- 2025 FIXED MOBILE US111 US222 NG23 NG118	AUXILIARY BROADCASTING (74) CABLE TELEVISION (78)	
2025 -- 2110 FIXED MOBILE 747A SPACE RESEARCH (Earth-to-space) (space-to-space) SPACE OPERATION (Earth-to-space) (space-to-space) EARTH EXPLORATION-SATELLITE (Earth-to-space) (space-to-space) 750A	2025 -- 2110 FIXED MOBILE 747A SPACE RESEARCH (Earth-to-space) (space-to-space) SPACE OPERATION (Earth-to-space) (space-to-space) EARTH EXPLORATION-SATELLITE (Earth-to-space) (space-to-space) 750A	2025 -- 2110 FIXED MOBILE 747A SPACE RESEARCH (Earth-to-space) (space-to-space) SPACE OPERATION (Earth-to-space) (space-to-space) EARTH EXPLORATION-SATELLITE (Earth-to-space) (space-to-space) 750A	2025 -- 2110 US90 US111 US219 US222	2025 -- 2110 FIXED MOBILE US90 US111 US219 US222 NG23 NG118	AUXILIARY BROADCASTING (74) CABLE TELEVISION (78)	
*	*	*	*	*	*	*

INTERNATIONAL FOOTNOTES

* * * * *

672 *Different category of service:* in Afghanistan, Bulgaria, China, Cuba, Japan, Mongolia, Czechoslovakia and the U.S.S.R., the allocation of the band 460-470 MHz to the meteorological-satellite service (space-to-Earth) is on a primary basis (see No. 425) and is subject to agreement obtained under the procedure set forth in Article 14.

* * * * *

675 *Additional allocation:* in Chile, Columbia, Cuba, Ecuador, the United States, Guyana, Honduras, Jamaica, Mexico and Panama, the allocation of the bands 470-512 MHz and 614-806 MHz to the fixed and mobile services is on a primary basis (see No. 425), subject to agreement obtained under the procedure set forth in Article 14.

676 *Additional allocation:* in Burundi, Cameroon, the Congo, Ethiopia, Israel, Kenya, Lebanon, Libya, Malawi, Senegal, Sudan, Syria, and Yemen, the band 470-582 MHz is also allocated to the fixed service on a secondary basis.

* * * * *

678 *Additional allocation:* in Costa Rica, Cuba, El Salvador, Ecuador, the United States, Guatemala, Guyana, Honduras, Jamaica, Mexico and Venezuela, the band 512-608 MHz is also allocated to the fixed and mobile services on a primary basis, subject to agreement obtained under the procedures set forth in Article 14.

* * * * *

697 *Additional allocation:* in the Federal Republic of Germany, Burkina Faso, Cameroon, Côte d'Ivoire, Denmark, Egypt, Finland, Israel, Kenya, Libya, Liechtenstein, Monaco, Norway, the Netherlands, Portugal, Sweden, Switzerland and Yugoslavia, the band 790-830 MHz, and in these same countries and in Spain, France, Malta, the Gabonese Republic and Syria, the band 830-862 MHz, are also allocated to the mobile, except aeronautical mobile, service on a primary basis. However, stations of the mobile service in the countries mentioned in connection with each band referred to in this footnote shall not cause harmful interference to, or claim protection from, stations of services operating in accordance with the Table in countries other than those mentioned in connection with this band.

* * * * *

703 In Region 1, in the band 862-960 MHz, stations of the broadcasting service shall be operated only in the African Broadcasting Area (see Nos. 400 to 403) excluding Algeria, Egypt, Spain, Libya and Morocco, subject to agreement obtained under the procedure set forth in Article 14.

* * * * *

Subpart H, of Part 22 of Chapter 1 of Title 47 of the Code of Federal Regulations is amended as follows:

3. The authority citation for Part 22 continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 303, unless otherwise noted.

4. Section 22.901 is revised to read as follows:

§ 22.901 Cellular service requirements and limitations.

Cellular system licensees must provide cellular mobile radiotelephone service upon request to all cellular subscribers in good standing, including roamers, while such subscribers are located within any portion of the authorized cellular geographic service area (see § 22.911) where facilities have been constructed and mobile service to subscribers has commenced. A cellular system licensee may refuse or terminate service, however, subject to any applicable state or local requirements for timely notification to any subscriber who operates a cellular telephone in an airborne aircraft in violation of § 22.925 or otherwise fails to cooperate with the licensee in exercising operational control over mobile stations pursuant to § 22.927

* * *

(d) Alternative technologies and co-primary services. Licensees of cellular systems may use alternative cellular technologies and/or provide fixed services on a co-primary basis with their mobile offerings, including personal communications services (as defined in Part 24 of this chapter) on the spectrum within their assigned channel block. Cellular carriers that provide mobile services must make such service available to subscribers whose mobile equipment conforms to the cellular system compatibility specification (see § 22.933).

(1) Licensees must perform or obtain an engineering analysis to ensure that interference to the service of other cellular systems will not result from the implementation of co-primary fixed services or alternative cellular technologies.

(2) Alternative technology and co-primary fixed services are exempt from the channeling requirements of § 22.905, the modulation requirements of § 22.915, the wave polarization requirements of § 22.367, the compatibility specification in § 22.933 and the emission limitations of §§ 22.357 and 22.917, except for emission limitations that apply to emissions outside the assigned channel block.

* * * * *

Subpart A, of Part 24 of Chapter 1 of Title 47 of the Code of Federal Regulations is amended as follows:

5. The authority citation for Part 24 continues to read as follows:

AUTHORITY: Secs. 4, 301, 302, 303, 309, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. §§ 154, 301, 302, 303, 309 and 332, unless otherwise noted.

6. Section 24.3 is revised to read as follows:

§ 24.3 Permissible communications.

PCS licensees may provide any mobile communications service on their assigned spectrum. Fixed services may be provided on a co-primary basis with mobile operations. Broadcasting as defined in the Communications Act is prohibited.

Subpart N, of Part 90 of Chapter 1 of Title 47 of the Code of Federal Regulations is amended as follows:

7. The authority citation for Part 90 continues to read as follows:

AUTHORITY: Sections 4, 303, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, and 332, unless otherwise noted.

8. Section 90.419 is revised to read as follows:

§ 90.419 Points of communication.

Normally, operations licensed under this part are intended to provide intrastation mobile communications. For example, a base station is intended to communicate with its associated mobile stations and mobile stations are intended to communicate between associated mobile stations and associated base stations of the licensee. Accordingly, operations between base stations at fixed locations are permitted only in the following situations:

(a) Base stations licensed under the Public Safety and Special Emergency Radio Services that operate on frequencies below 450 MHz, may communicate on a secondary basis with other base stations, operational fixed stations, or fixed receivers authorized in these services.

(b) Base stations licensed on any frequency in the Industrial and Land Transportation Radio Services and on base station frequencies above 450 MHz in the Public Safety and Special Emergency Services may communicate on a secondary basis with other base stations, operational fixed stations, or fixed receivers authorized in these services only when:

(1) The messages to be transmitted are of immediate importance to mobile stations; or

(2) Wireline communications facilities between such points are inoperative, economically impracticable, or unavailable from communications common carrier sources. Temporary unavailability due to a busy wireline circuit is not considered to be within the provisions of this subparagraph.

(c) Operational fixed stations may communicate with units of associated mobile stations only on a secondary basis.

(d) Operational fixed stations licensed in the Industrial and Land Transportation Radio Services may communicate on a secondary basis with associated base stations licensed in these services when:

(1) The messages to be transmitted are of immediate importance to mobile stations; or

(2) Wireline communications facilities between such points are inoperative, economically impracticable, or unavailable from communications common carrier sources. Temporary unavailability due to a busy wireline circuit is not considered to be within the provisions of this subparagraph.

(e) Travelers' Information Stations are authorized to transmit certain information to members of the traveling public (see § 90.242).

(f) CMRS Licensees in the SMR categories of Subpart S, CMRS providers authorized in the 220 MHz service of Subpart T, CMRS paging operations as defined by Subpart P and for-profit interconnected business radio services with eligibility defined by Section 90.75 are permitted to utilize their assigned spectrum for fixed services on a co-primary basis with their mobile operations.

APPENDIX D - REGULATORY FLEXIBILITY ANALYSIS

I. Final Regulatory Flexibility Analysis (for First Report and Order)

As required by Section 603 of the Regulatory Flexibility Act, 5 U.S.C. § 603 (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rule Making* in WT Docket No. 96-6.¹ The Commission sought written comments on the proposals in the *Notice*, including the IRFA. The Commission's Final Regulatory Flexibility Analysis for the *First Report and Order* conforms to the RFA, as amended by the Contract With America Advancement Act of 1996.²

A. Need for and purpose of the action

The *First Report and Order* has implemented Sections 332 and 3(n), respectively, of the Communications Act of 1934, as amended. The rules adopted herein will carry out Congress's intent to establish a consistent regulatory framework for all commercial mobile radio services (CMRS). In addition, the rules adopted herein will assist in the development of competition among wireless and wireline services for the benefit of the consumer.

B. Issues Raised in response to the IRFA

No comments were submitted in response to the IRFA. In general comments on the *Notice of Proposed Rule Making*, however, some commenters raised issues that might affect small business entities. One commenter, PCS One, a small business entity, argued that the proposed flexibility to offer fixed services should not be extended to cellular at this time in order to give Personal Communications Services (PCS) licensees, many of whom are small business entities, an opportunity to enter the marketplace and establish themselves against incumbent cellular providers. Some other parties agreed that if the Commission should make a distinction between broadband CMRS providers, it should allow PCS providers the greatest flexibility. The Commission choose to provide all CMRS providers with the increased flexibility. Granting all CMRS providers increased flexibility to provide fixed wireless services is consistent with principles of regulatory parity, will allow all CMRS providers to determine the services that they will provide to the public, and will increase competition between the CMRS services.

C. Description, and Number of Small Entities Involved

This rule making proceeding applies to providers of cellular, narrowband and broadband personal communications services (PCS), CMRS specialized mobile radio services (SMR), CMRS

¹ Amendment of the Commission's Rules to Permit Flexible Service Offerings in the Commercial Mobile Radio Services, *Notice of Proposed Rule Making*, WT Docket No. 96-6, 11 FCC Rcd 2445 (1996).

² Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAA, Subtitle II of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) *codified at* 5 U.S.C. § 601 *et seq.*

paging, commercial 220 MHz services, and for-profit interconnected business radio services. Since this rule making proceeding applies to multiple services, we will analyze the effects of these rules on a service-by-service basis.

Estimates for Cellular Licensees

Since the Commission did not define a small business with respect to cellular services, we will utilize the Small Business Administration's (SBA) definition applicable to radiotelephone companies -- *i.e.* an entity employing less than 1,500 persons.³ The size data provided by the SBA does not enable us to make a meaningful estimate of the number of cellular providers which are small entities because it combines all radiotelephone companies with 500 or more employees.⁴ We therefore used the 1992 Census of Transportation, Communications, and Utilities, conducted by the Bureau of the Census, which is the most recent information available. Data from the Bureau of the Census' 1992 study indicates that only 12 out of a total of 1,178 radiotelephone firms which operated during 1992 had 1,000 or more employees.⁵ However, we do not know how many of the 1,178 firms were cellular telephone companies. Given this fact, we assume, for purposes of our evaluations and conclusions in this Final Regulatory Flexibility Analysis, that all of the current cellular licensees are small entities, as that term is defined by the SBA. Although there are 1,758 cellular licenses, we are unable to determine the number of cellular licensees because a single cellular licensee may own several licenses.

Estimates for PCS Services

The Commission, with respect to narrowband and broadband PCS, defines small businesses to mean firms who have gross revenues of not more than \$40 million in each of the preceding three calendar years. This definition of "small entity" in the context of the PCS services has been approved by the SBA.⁶

The Commission has auctioned broadband PCS licenses in Blocks A, B, and C. The Commission does not have sufficient information to determine whether any small businesses within the SBA-approved definition bid successfully for licenses A or B Block auctions. As of

³ 13 C.F.R. § 121.201, Standard Industrial Classification (SIC) Code 4812.

⁴ U.S. Small Business Administration 1992 Economic Census Employment Report, Bureau of the Census, U.S. Department of Commerce, SIC Code 4812 (radiotelephone communications industry data adopted by the SBA Office of Advocacy).

⁵ U.S. Bureau of the Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications, and Utilities, UC92-S-1, Subject Series, Establishment and Firm Size, Table 5, Employment Size of Firms; 1992, SIC Code 4812 (issued May 1995).

⁶ See Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, *Third Memorandum Opinion and Order and Further Notice of Proposed Rule Making*, 10 FCC Rcd 175, 196 (1995); Competitive Bidding, *Fifth Report and Order*, 9 FCC Rcd 5581-5584 (1995); 47 C.F.R. §§ 24.320(b) and 24.720(b).

now, there are 90 non-defaulting winning bidders that qualify as small entities in the C Block PCS auctions. Based on this information, we conclude that the number of broadband PCS licensees affected by the rule adopted in this proceeding includes the 89 winning bidders that qualified as small entities in the Block C broadband PCS auction.

At present, there have been no auctions held for the D, E, and F Blocks of broadband PCS spectrum. The Commission anticipates a total of 1,479 licenses will be awarded in the D, E, and F Block PCS auctions, which are scheduled to begin on August 26, 1996. Participation in the F block is limited to entrepreneurs with under \$125 million in average gross revenues over the past three years. However, there is no basis upon which to estimate the number of licenses that will be awarded to small entities. Given the facts that nearly all radiotelephone companies have fewer than 1,000 employees and that no reliable estimate of the number of prospective D, E, and F Block licensees can be made, we assume, for purposes of our evaluations and conclusion in this Final Regulatory Flexibility Analysis, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

The Commission has auctioned nationwide and regional licenses for narrowband PCS. There are 11 nationwide and 30 regional licensees for narrowband PCS. The Commission does not have sufficient information to determine whether any of these licensees are small businesses within the SBA-approved definition. Based on this information, we conclude that the number of narrowband PCS licensees affected by the rule adopted in this proceeding includes all of the 41 licensees. At present, there have been no auctions held for the major trading area (MTA) and basic trading area (BTA) narrowband PCS licenses. The Commission anticipates a total of 561 MTA licenses and 2,958 BTA licenses will be awarded in the auctions. Those auction have not yet been scheduled, however. Given the facts that nearly all radiotelephone companies have fewer than 1,000 employees and that no reliable estimate of the number of prospective MTA and BTA narrowband licensees can be made, we assume, for purposes of our evaluations and conclusion in this Final Regulatory Flexibility Analysis, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

Estimates for SMR Services

The Commission, with respect to 800 MHz and 900 MHz SMR services, has adopted a two-tiered approach to the definition of small business: (a) "very small businesses" are firms who have gross revenues of not more than \$3 million in each of the preceding three calendar years; and (b) "small businesses" are firms who have annual gross revenues of not more than \$15 million in the each of the preceding three years. This definition of "small entity" in the context of 800 MHz and 900 MHz SMR has been approved by the SBA.⁷

⁷ See Amendment of Parts 2 and 90 of the Commission's Rules for the use of 200 Channels Outside the Designated Filing areas in the 896-901 MHz and 935-940 MHz Bands Allotted to the Specialized Mobile Radio Pool, *Second Order on Reconsideration and Seventh Report and Order*, 11 FCC Rcd 2639, 2073-77 (1996); Implementation of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Services in the 800 MHz Frequency Band, *First Report and Order, Eighth Report and Order and 2nd Further Notice of Proposed Rule*

The Commission recently held auction for the 900 MHz SMR services. There were 60 winning bidders who qualified as small entities. Based on this information, we conclude that the number of 900 MHz SMR licensees affected by the proceeding includes these 60 small entities.

No auctions have been held for the 800 MHz SMR services. While the Commission anticipates a total of 525 licenses awarded for the upper 200 channels in the 800 MHz auctions, it has not yet determined how many licenses will be awarded for the lower 230 channels in the 800 MHz SMR auction. Despite the current incumbents in the 800 MHz SMR service, due to the impending auction, we are unable to determine the ultimate number of small businesses who will receive licenses. Given the facts that nearly all radiotelephone companies have fewer than 1,000 employees and that no reliable estimate of the number of prospective 800 MHz licensees can be made, we assume, for purposes of our evaluations and conclusions in this Final Regulatory Flexibility Analysis, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

Commercial Paging and Commercial 220 MHz Radio Services

Since the Commission has not yet defined a small business with respect to paging services, we will utilize the SBA's definition applicable to radiotelephone companies -- *i.e.* an entity employing less than 1,500 persons.⁸ With respect to commercial 220 MHz services, the Commission has proposed a two-tiered definition of small business for purposes of auctions: (1) for EA licensees,⁹ a firm with average annual gross revenues of not more than \$6 million for the preceding three years and (2) for regional and nationwide licensees, a firm with average annual gross revenues of not more than \$15 million for the preceding 3 years.¹⁰ Since this definition has not yet been approved by the SBA, we will utilize the SBA's definition applicable to radiotelephone companies. We note that while there are incumbents in this service, they are not commercial providers and will not be affected by this proceeding. Since there have been no auctions for either service as of yet and the parameters of the industry have not been fully defined, any estimate of the number of small businesses who will seek to bid in the future auctions is not yet determined. Given the fact that nearly all radiotelephone companies have

Making, 11 FCC Rcd 1463 (1996); 47 C.F.R. § 90.814(b)(i) and (ii).

⁸ 13 C.F.R. § 121.201, Standard Industrial Classification (SIC) Code 4812.

⁹ EA licenses refer to the 60 channels in the 172 geographic economic areas as defined by the Bureau of Economic Analysis, Department of Commerce. See *In the Matter of Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service*, *Second Memorandum Opinion and Order and Third Notice of Proposed Rule Making*, GN Docket 93-252, 10 FCC Rcd 188 (1995).

¹⁰ See *In the Matter of Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service*, *Second Memorandum Opinion and Order and Third Notice of Proposed Rule Making*, GN Docket 93-252, 10 FCC Rcd 188 (1995).

fewer than 1,000 employees,¹¹ and that no reliable estimate of the number of prospective licensees can be made, we assume, for purposes of our evaluations and conclusion in this Final Regulatory Flexibility Analysis, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

Interconnected Business Services

Since the Commission did not define a small business with respect to for-profit interconnected business services, we will utilize the SBA's definition applicable to radiotelephone companies -- *i.e.* an entity employing less than 1,500 persons.¹² The size data provided by the SBA does not enable us to make a meaningful estimate of the number of for-profit interconnected business service providers which are small entities because it combines all radiotelephone companies with 500 or more employees.¹³ We therefore used the 1992 Census of Transportation, Communications, and Utilities, conducted by the Bureau of the Census, which is the most recent information available. Data from the Bureau of the Census' 1992 study indicates that only 12 out of a total of 1,178 radiotelephone firms which operated during 1992 had 1,000 or more employees.¹⁴ However, we do not know how many of the 1,178 firms were for-profit interconnected business service companies. Given this fact, we assume, for purposes of our evaluations and conclusions in this Final Regulatory Flexibility Analysis, that all of the current inter-connected business service licensees are small entities, as that term is defined by the SBA. Although there are in excess of 13,000 for-profit interconnected business service licenses, we are unable to determine the number of for-profit interconnected business service licensees because a single licensee may own several licenses.

D. Reporting, Recordkeeping, and Other Compliance Requirements:

The rules adopted in the *First Report and Order* do not impose any additional reporting, recordkeeping, or other compliance requirements.

¹¹ See U.S. Bureau of the Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications, and Utilities, UC92-S-1, Subject Series, Establishment and Firm Size, Table 5, Employment Size of Firms; 1992, SIC Code 4812 (issued May 1995).

¹² 13 C.F.R. § 121.201, Standard Industrial Classification (SIC) Code 4812.

¹³ U.S. Small Business Administration 1992 Economic Census Employment Report, Bureau of the Census, U.S. Department of Commerce, SIC Code 4812 (radiotelephone communications industry data adopted by the SBA Office of Advocacy).

¹⁴ U.S. Bureau of the Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications, and Utilities, UC92-S-1, Subject Series, Establishment and Firm Size, Table 5, Employment Size of Firms; 1992, SIC Code 4812 (issued May 1995).

E. Steps taken to minimize burdens on Small Entities

In the *First Report and Order* the Commission amends its rules to allow providers of narrowband and broadband PCS, cellular, CMRS SMR, CMRS paging, CMRS 220 MHz service, and interconnected business radio services to offer fixed wireless services on their assigned spectrum on a co-primary basis with mobile service. These rule changes will allow CMRS providers greater flexibility to provide new and innovative services to meet consumer demands. Allowing service providers to offer all types of fixed, mobile, and hybrid services in response to market demand will allow for more flexible responses to consumer demand, a greater diversity of services and combinations of services, and increased competition both between CMRS providers and wireline providers, as well as between CMRS providers. This is consistent with the goals of the Telecommunications Act of 1996 (1996 Act),¹⁵ which amended the Communications Act of 1934, which seeks to increase competition between the various providers of telecommunications services, including competitive alternatives to traditional local exchange service.¹⁶ All consumers will also benefit from technological advances in fixed services and fixed/mobile combinations that potentially could be stifled by restrictive service definitions.

F. Significant alternatives considered and rejected

In the *Notice* we sought comment on alternative approaches to allowing PCS and other CMRS providers more flexibility to offer fixed services, including: (1) adopting a rule that would expressly allow CMRS providers to offer "fixed wireless local loop," (2) permitting CMRS providers to offer wireless local loop and other defined fixed services, or (3) allowing CMRS providers to offer any form of fixed service without restriction. An overwhelming majority of the commenters support amending our rules to allow all CMRS providers to offer all types of fixed wireless services without restriction. One commenter, GO Communications, a small business entity, argued that CMRS providers should be required to offer at least some mobile service over their frequencies. Based on the record in this proceeding, the Commission believes that the public interest is better served by not attempting to limit potential use of CMRS spectrum to specific applications. Imposing such a limitation could lead to difficult definitional questions about what constitutes "wireless local loop" or other defined services. Further, if we were to restrict fixed service to certain configurations, carriers might be reluctant to pursue some potentially efficient options out of concern that they would be considered to fall outside the definition of our prescribed service definition. Rather than limit the flexibility of carriers in this manner, we prefer to encourage innovation and experimentation through a broader, more flexible standard. This will benefit small business by allowing them greater flexibility in determining which services they will provide to the public.

¹⁵ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

¹⁶ See S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. 1 (1996); see also 47 U.S.C. §§ 251-261.

In the *Notice*, the Commission also proposed to apply whatever increased flexibility we granted to broadband CMRS services -- broadband PCS, cellular, and SMR -- and sought comment on whether narrowband CMRS services -- narrowband PCS, paging, commercial 220 MHz services, and interconnected business radio services -- should also have such increased flexibility. Commenters also generally support extending flexibility to all CMRS bands, including both broadband and narrowband services. PCS One, a small business entity, opposes the Commission's proposal to allow cellular licensees to provide fixed wireless services, arguing that the Commission must permit PCS, for at least a reasonable interval, greater flexibility than cellular in the use of its spectrum. We find that we should extend the flexibility to offer fixed services to the all the broadband services, including cellular, as well as the narrowband services set out in the *Notice*. We conclude that subjecting narrowband licensees to more stringent regulatory constraints than broadband CMRS providers would be inconsistent with principles of regulatory parity and serves no public interest goal. We conclude that narrowband licensees should be entitled to the regulatory flexibility so that they may take advantage of technological advances that may occur without being required to seek additional changes to the rules. This result is also in keeping with the goals of the 1996 Act to make available the most competitive environment possible for telecommunications services. It will also benefit all small business, including all PCS licensees, by providing them greater flexibility to determine which service they will provide to the public.

G. Report to Congress

The Commission shall send a copy of this Final Regulatory Flexibility Analysis with this *First Report and Order* in a report to Congress pursuant to Section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. § 801(a)(1)(A). A copy of this Regulatory Flexibility Analysis will also be published in the Federal Register.

II. Initial Regulatory Flexibility Analysis (for Further Notice of Proposed Rule Making)

As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the policies and rules proposed in this *Further Notice of Proposed Rule Making*. Written public comments are requested on the IRFA.

A. Reason for Action

This rule making proceeding was initiated to secure comment on proposals for allowing CMRS providers greater flexibility in the provision of fixed wireless services. The proposals advanced in the *Further Notice of Proposed Rule Making* are designed to determine the appropriate regulatory scheme for CMRS providers who wish to offer fixed wireless services. The Commission seeks comment on the appropriate role of the federal government and the states

in the regulation of CMRS providers who offer hybrid mobile and fixed services on a co-primary basis.

B. Objectives

The Commission proposes to establish a rebuttable presumption that any wireless service provided under a CMRS provider's license would be considered to come within the definition of CMRS and consequently regulated as CMRS. Under this approach, the Commission would allow any interested party to challenge this presumption regarding a particular service offered by a CMRS provider. If a party could demonstrate that the service provider in question does not meet the definition of CMRS for a particular offering, we would not regulate that particular offering as CMRS. We seek comment on this approach and what types of evidence the Commission should evaluate when considering a challenge to a presumption that a fixed wireless service provided by a CMRS provider should be regulated as CMRS. We also seek comment on the extent to which services provided under separate licenses or by separate entities may be relevant to the regulatory status of a particular fixed service offering provided under a given license. Some parties have advocated that we regulate any fixed wireless service provided by a CMRS provider as CMRS until such time that the service constitutes a substitute for land line telephone exchange service in a substantial portion of a state. We seek comment on this approach. We also seek comment on what federal regulation should be imposed on a CMRS provider's offering of fixed wireless service if we find that it does not come within the purview of CMRS.

C. Reporting, Recordkeeping, and Other Compliance Requirements

The proposals under consideration in the *Further Notice of Proposed Rule Making* do not require recordkeeping, or other compliance requirements for small business entities.

D. Federal Rules Which Overlap, Duplicate or Conflict With These Rules

None.

E. Description, and Number of Small Entities Involved

Pursuant to the Contract with America Advancement Act of 1996,¹⁷ the Commission is required to estimate in its Final Regulatory Flexibility Analysis the number of small entities to which a rule will apply, provide a description of such entities, and assess the impact of the rule on such entities. To assist the Commission in this analysis, commenters are requested to provide information regarding how many total CMRS entities would be affected by the proposed rules in the *Further Notice of Proposed Rule Making*. In particular, we seek estimates of how many CMRS entities are small businesses.

¹⁷ Pub. L. No. 104-121, 110 Stat. 847 (1996).

As explained in the Final Regulatory Flexibility Analysis for the *First Report and Order*, there are different definitions of "small business" for the various services affected by this proceeding. Since the Commission did not define a small business with respect to cellular services, paging, and interconnected business radio service, we will utilize the Small Business Administration's (SBA) definition applicable to radiotelephone companies -- *i.e.* an entity employing less than 1,500 persons.¹⁸ We seek comment on whether this definition should be refined to take into account the different classes of cellular, paging and for-profit interconnected business radio services. With respect to narrowband and broadband PCS, the Commission defines small business to mean firms who have gross revenues of not more than \$40 million in each of the preceding three calendar years.¹⁹ With respect to 800 MHz and 900 MHz SMR services, the Commission has a two-tiered definition of small business: (a) "very small businesses" are firms who have gross revenues of not more than \$3 million in each of the preceding three calendar years; and (b) "small businesses" are firms who have annual gross revenues of not more than \$15 million in the each of the preceding three years.²⁰ With respect to commercial 220 MHz services, the Commission has proposed a two-tiered analysis: (1) for EA licensees, a firm with average annual gross revenues of not more than \$6 million for the preceding three years and (2) for regional and nationwide licensees, a firm with average annual gross revenues of not more than \$15 million for the preceding 3 years.²¹

We seek comment on our use of these definitions in this context. Additionally, we request commenters to identify whether they are a "small business" under this definition. For commenters that are a subsidiary of another entity we seek this information for both the subsidiary and the parent corporation or entity

F. Significant Alternatives Minimizing the Impact on Small Entities Consistent with the Stated Objectives

In the *Further Notice of Proposed Rule Making* the Commission proposes to establish a rebuttable presumption that any wireless service provided under a CMRS provider's license would be considered to come within the definition of CMRS and be regulated as CMRS. The Commission seeks comment on this approach and what types of evidence the Commission should evaluate when considering a challenge to such a presumption. Other alternatives suggested in the comment to the *Notice of Proposed Rule Making* include regulating any fixed wireless service provided by a CMRS provider as CMRS until such time that the service constitutes a substitute

¹⁸ 13 C.F.R. § 121.201, Standard Industrial Classification (SIC) Code 4812

¹⁹ See 47 C.F.R. §§ 24.320(b), 24.720(b).

²⁰ See 47 C.F.R. § 90.814(b)(i) and (ii).

²¹ See In the Matter of Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service, *Second Memorandum Opinion and Order and Third Notice of Proposed Rule Making*, GN Docket 93-252, 10 FCC Rcd 188 (1995)

for land line telephone exchange service in a substantial portion of a state. We seek comment on that approach and any additional significant alternatives presented in the comments also will be considered. If the fixed wireless service provided by a CMRS provider, including small business entities, is not regulated as CMRS, that service may be subject to state regulation of entry and rates. We also seek comment on what Federal regulation should be imposed on a CMRS provider's offering of fixed wireless service if that service does not come within the purview of CMRS. We also seek comment on what impact each alternative may have on small business entities.

G. Legal Basis

The proposed action is authorized under Sections 4(i), 4(j), 7(a), 303(b), 303(f), 303(g), 303(r), 332(a), and 332(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 157(a), 303(b), 303(f), 303(g), 303(r), 332(a), and 332(c).

H. IRFA Comments

We request written public comment on the foregoing Initial Regulatory Flexibility Analysis. Comments must have a separate and distinct heading designating them as responses to the IRFA and must be filed by the deadlines provided in paragraphs 60 and 61 of the *First Report and Order* and *Further Notice of Proposed Rule Making*.